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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KRISTYN DAWSON, an individual,

Plaintiff,

v.

BANK OF NEW YORK MELLON, a
Delaware corporation; and **BANK OF
AMERICA, N.A.** and its subsidiaries
including aka Bank of America Loan
Servicing, LP, Countrywide Financial
Corporation, and Countrywide Home Loans,
Inc.; **DITECH FINANCIAL, LLC** as
successor by merger to Green Tree
Servicing LLC,

Defendants.

Case No. 3:16-cv-01427-HZ

**DEFENDANT BANK OF AMERICA,
N.A.'S REQUEST FOR JUDICIAL
NOTICE**

Defendant Bank of America, N.A. respectfully requests this Court to take Judicial Notice pursuant to Federal Rule of Evidence 201 and/or incorporate by reference the documents attached to the Declaration of James P. Laurick ("Laurick Declaration") filed concurrently herewith for the reasons explained below.

FRE 201 gives the Court the power to take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

FRE 201(b). Judicial notice may be taken at any stage of the proceedings. FRE 201(f). This Court may take judicial notice of documents that are matters of public record without converting a motion to dismiss into a motion for summary judgment. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (holding that district court, when determining whether complaint fails to state a claim, may take “judicial notice of matters of public record outside the pleadings[.]”).

Documents that are properly subject to the incorporation by reference doctrine may be considered by the Court at the motion to dismiss stage. “[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions...may be considered” in the context of a motion to dismiss. *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996) (quoting *Fecht v. The Price Co.*, 70 F.3d 1078, 1080 n.1 (9th Cir. 1995)). In the Ninth Circuit, the doctrine of “incorporation by reference” has been extended to situations in which “the plaintiff’s claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint.” *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (citing *Parrino v. FHP, Inc.* 146 F.3d 699, 706 (9th Cir.1998)). When a plaintiff fails to introduce a pertinent document as part of his/her pleading, the defendant may do so as part of its motion to dismiss, and such documents will not be considered outside the pleadings. *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994), overruled on other grounds, *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

The following documents are the proper subject of judicial notice and/or incorporation by reference:

1. Deed of Trust dated July 25, 2005 and recorded in the Clackamas County Official Records, document number 2005-071160. The Deed of Trust is the proper subject of judicial notice because it is a matter of public record, it is publicly available, and its accuracy is not

reasonable subject to debate. FRE 201(b). The Deed of Trust is attached to the Laurick Declaration as Exhibit A.

2. Business Entity Data for America's Wholesale Lender from the Oregon Secretary of State Corporation Division Database. The business entity data is the proper subject of judicial notice because it is a matter of public record, it is publicly available, and its accuracy is not reasonable subject to debate. FRE 201(b). The Business Entity Data for America's Wholesale Lender is attached to the Laurick Declaration as Exhibit B.

3. Business Entity Data for Countrywide Home Loans, Inc. from the Oregon Secretary of State Corporation Division Database. The business entity data is the proper subject of judicial notice because it is a matter of public record, it is publicly available, and its accuracy is not reasonable subject to debate. FRE 201(b). The Business Entity Data for Countrywide Home Loans, Inc. is attached to the Laurick Declaration as Exhibit C.

DATED: August 5, 2016.

KILMER VOORHEES & LAURICK, P.C.

/s/ James P. Laurick

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CERTIFICATE OF SERVICE

I certify that on this 5th day of August, 2016, the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S REQUEST FOR JUDICIAL NOTICE** will be served in accordance with the Court's CM/ECF system which will send notification of such filing by notice via email to the ECF participants of record a true copy of the foregoing document.

KILMER VOORHEES & LAURICK, P.C.

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